IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN &
THE HONOURABLE MR. JUSTICE K.P. BALACHANDRAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 31162 OF 2005(S)

OA.297/2005 OF CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

.....

PETITIONER:

ABDUL HAKEEM.P., AGED 29 YEARS,
S/O.SHAIK KOYA, R/O PEECHIYATH HOUSE,
KALPENI ISLAND, LAKSHADWEEP.

BY ADV. SRI.TOM K.THOMAS

RESPONDENTS:

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1. THE UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI-110001.

2. THE ADMINISTRATOR, UNION TERRITORY
OF LAKSHADWEEP, KAVARATTI, ISLAND.

3. THE SECRETARY, DEPARTMENT OF SHIPPING
AND TRANSPORT, LAKSHADWEEP, KAVARATTI.

4. THE PORT OFFICER, UNION TERRITORY
OF LAKSHADWEEP, KAVARATTI.

BY ADV. SRI.A.SUDHI VASUDEVAN, ADDL.CGSC
SRI.SHAFIK M.ABDULKHADIR,SC,LAKSHADWEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 8/12/2006, THE COURT ON 12.1.2007, DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORIGINAL APPLICATION NO. 297/2005 DATED 25.4.2005 ALONG WITH ANNEXURES FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

EXT.P2 TRUE COPY OF THE REPLY STATEMENT DATED 24.6.2005 FILED BY THE RESPONDENTS 2, 3 AND 4 IN O.A. NO. 297/2005 BEFORE THE CENTRAL ADMINISTRATIVIE TRIBUNAL, ERNAKULAM.

EXT.P3 TRUE COPY OF THE REJOINDER FATED 13.7.2005 FILED BY THE PETITIONER IN OA NO. 297/2005 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P4 TRUE COPY OF THE ORDER DATED 20.10.2005 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A. NO. 297/2005.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

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W.P.(C) 31162/2005

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DATED THIS, THE 12TH DAY OF JANUARY, 2007.

J U D G M E N T

Petitioner impugns the order dated 20.10.2005 passed by the Central Administrative Tribunal, Ernakulam, in O.A. 297 of 2005. He filed the above said application seeking to quash a notification produced as Annexure A5 therein as illegal and arbitrary and for a direction to the respondents to give effect to the decision of the Selection Body which, stated to have selected him as Tally Clerk in the Port Department and to appoint him as Tally Clerk and for other consequential reliefs.

2. Annexure A5 is a notification inviting application for the post of Tally Clerk issued by the Administration of the Union Territory of Lakshadweep, department of Port, Kavaratti, under date 11.4.2005. According to the petitioner, he was an applicant to the post of Tally Clerk pursuant to the notification issued prior to Annexure A5 and he participated in the written test and became successful and he was also called for an interview. Pursuant to the selection made by the Selection Committee, one Aneesurrahaman secured the first rank and though he was selected for

appointment, he relinquished his claim since he was holding a higher post and so, the Interview Board understood to have recommended the name of the applicant for appointment as a substitute and the minutes have been recorded in this regard by the Selection Board. But the respondent did not issue any appointment order to him even lapse of several months. Though he approached the authorities seeking necessary orders, there was no favourable reply. While so, the present notification was issued denying his rightful claim and it is on the aforesaid facts as stated above that the petitioner had approached the Tribunal for necessary relief.

3. The respondents on the other hand contended that no panel of wait list was recommended by the Board, that the appointments are made based on the select list duly recommended by the Interview Board and not based on the rank list as claimed by the petitioner, the delay in the matter of appointment of first rank holder was caused due to his securing some other job and not due to mala fides on the part of the respondents, that the recommendations of the Selection Board suffered from various infirmities, it did not have the approval by the Administrator and it was also against the specific instructions of Government of India, produced as Exts. R4(e), R4 (f) and R4(g) before the Tribunal.

4. The Tribunal formulated two points for consideration, (i) what

is the present status of the applicant in terms of the recommendations of the Selection Boards and (ii) what is the legal status of the recommendations and of the decision of the Administration on such recommendations.

While considering the first question it was found that the Administrator is the appointing authority for the post of Tally Clerk and he approves the setting up of the Selection Board and subsequently decides on the recommendations thereof. Nothing was brought out to the notice of the Tribunal regarding the powers vested in the Administrator regarding the approval to be given to the setting up of the Board and it was noticed that while setting up the first committee, no mandate has been given specifically. It was also found that the contents of the recommendations of such Board were varying from time to time and in this case, the recommendation of the first Selection Committee was restricted only to the first ranker and no wait-listed candidate was mentioned in the list proposed by the Board. This was in contrast to the proceedings of an identical Board set up previous time for selection of two candidates against two vacancies of same post and one wait listed candidate was made as part of the recommendations. When the file was put up to the Administrator for approval of the selection of the first rank holder, no final decision was taken since he was not interested in the selection and consequently, no offer of

appointment was ever made. As regards the second Board, neither the constitution nor the composition was approved by the Administrator and for that reason, the recommendations nominating the applicant was not approved by the Administrator which resulted in re-notification of the vacancy. In short it was found that the position that emerges is that the first Board recommended only one person and others were merely listed in the order of merit, the recommendations were not acted upon, much less accepted, the recommendations of the second board were rejected on account of lack of approval for its constitution and these resulted in the re-notification of the vacancy.

5. We have called for the records. The files were produced and we perused the same. We find from the records that the finding as recorded by the Tribunal is correct.

6. As regards the legal status of the recommendations and of the decision of the Administrator on such recommendations, reference was made to the dictum laid down by the apex court in various decisions and more particularly in the case of **Ludhiana Central Co-operative Bank Ltd. vs. Amrik Singh** (AIR 2003 SC 3103) wherein it is observed that when the power to appoint is to be vested in one authority and the

constitution of a committee is for the selection of candidates by tests etc. the said committee cannot finalize the same without the approval of the appointing authority and even otherwise, it is well settled that a person whose name is said to have find place in a select panel has no vested right to get appointed to the posts in spite of vacancies existing. Accordingly, it was found that the the Administrator being the appointing authority and the Selection Board constituted to assist him, the Board has no superior power than the Administrator, whose decisions are final.

7. It was found that Ext. A6 is an O.M. of the DOPT, wherein it is laid down that recruitment should take place only when there are no candidates available from an earlier list of selected candidates and no further recruitment to take place till the available selected candidates or exhausted. But in this case, the Selection Board selected only the first rank holder Sri. Aneesurrahman and others were merely listed but not selected. On the other hand, Annexure R4 issued by the Administrator lays down that the select list of the candidates should be prepared with reference to the number of vacancies notified to the Employment Exchange and preparation of a reserve list was to the option of the Selection Board. Though in 1999 for the same post, a reserve list was prepared of one candidate along with the list of two selected candidates, the applicant was not included even in a

waiting list. Thus, the applicant was not given the status of a selected candidate and as such has no vested right for consideration. Following the dictum laid down in the case of **Ludhiana Central Co-operative Bank (AIR SC 3103)** it was found that the Administrator has a final say in the matter of recommendation of the Selection Committee and since he has turned down the recommendation of the second board, the decision of the Administrator would prevail. In so far as the applicant only enjoys the status only of a listed candidate and not a selected candidate, no relevance could be placed on the instruction Annexure A6 as it may not work to his advantage. It was in those circumstances, that the O.A. was dismissed against which the present writ petition is filed.

8. Learned counsel for the petitioner reiterated his contentions and submitted that when the only selected candidate having failed to join the post and the selection board having recommended the name of the petitioner, though subsequently, it ought to have been accepted by the Administrator and appointment made accordingly. It is also contended that in the re-notification issued, the qualification prescribed is the very same as was prescribed in the earlier notification and as such it will be sheer waste of public money to conduct a fresh selection and at any rate, petitioner

having been recommended by the Board, he gets a right to be appointed.

9. The respondent, on the other hand, contended that the Selection Board was merely assisting the appointing authority in the matter of selection of the candidate for the post in question and once the Selection Board did not include the petitioner's name in the select list, the subsequent recommendation made without being requested for in that behalf by the Administrator, cannot be considered and since more than six months have elapsed after notification issued in this behalf, the Administrator was perfectly right in proceeding to re-notify the vacancy in terms of the guidelines. It is also contended that the view taken by the Tribunal being a plausible view, does not call for any interference under Article 226 of the Constitution of India..

10. We have considered the rival submissions made by the parties and perused the files produced by the respondents. Admittedly, petitioner's name was not included in the select list by the selection board and the only candidate included in the select list was Aneesurrahman. When Aneesurrahman waived his right to be appointed, for whatever reasons it may be, and in the absence of any other candidate, the Administrator re-notified the vacancy. It is true that subsequently, the Selection Board recommended the name of the petitioner by forwarding a separate list to the

Administrator. As per the proceedings of the Selection Board for recruitment to the post of Tally Clerk dates 3.2.2004, it is seen that the Selection Board considered the candidates on the basis of their performance in the written test, experience of working in sea-going ships, if any, and the performance in the personal aptitude test. The Interview Board recommended Sri. Aneesurrahman, on the basis of his performance in the above test. It was subsequently, by a separate proceeding on coming to know that Aneesurrahman is not willing to accept the post as he is already holding a higher post in the Lakshadweep Administration, that the Selection Board suggested the name of the petitioner who was the next candidate in the merit along with the name of a wait listed candidate to be considered in case selected candidate does not accept the offer. Accordingly, petitioner - Abdul Hakeem, was recommended by the Interview Board for appointment as Tally Clerk in the Department of Port, Lakshadweep. The Selection Board also recommended the name of the petitioner to be kept in the wait list to be considered only if the selected candidate does not accept the offer. However, this minutes of the proceedings does not contain any date. The Administrator is the appointing authority in respect of Group C & D posts. The proposal of the Department to fill up the vacancy by appointing the petitioner was put up for approval

by the Secretary (Admn.) Then in the light of O.M. No. 71/49-DGS (Appts) dated 11.12.49 it was noticed that post of Tally Clerk fell vacant with effect from 7.7.2003 and the vacancy was notified to the employment exchange. Interview was conducted on 3.2.2004 and the result was declared and appointment could not be made till date. The Selection Board recommended only one person ie. Aneesurrahman to the post of Tally Clerk and there was no panel of waiting list. The 14 persons who had attended the interview are not in the select list. The review meeting of the Selection Board was held after nearly nine months and that too, without the approval of the appointing authority (Administrator). Therefore, recommendation of the Selection Board has to be treated as null and void. Filling up of the vacancy was kept pending for more than nine months between the date of declaration and actual filling up of the vacancy as per the notification. As per O.M. No. 22011/2/D79-Estt. dated 8.2.1982 issued by the Government of India, Department of Personnel And Administrative Reforms, New Delhi, recruitment, whether from open market or through a Departmental Competitive Examination should take place only when there are no candidates available from the earlier list of selected candidates and there is no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct

recruitment or through a Departmental Competitive Examination. Further, if there are selected candidates awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment should be given appointments first before starting appointments from a fresh list from a subsequent recruitment / or examination. As per Clause xii of the Circular dated 26.11.1990 issued by the Administrator of the Union Territory of Lakshadweep, the select list of candidates should be prepared to the extent of the number of vacancies notified to the Employment Exchange. A reserve list also could be prepared if found necessary in the order of merit. However, such list should not exceed 10% of the notified vacancies including vacancies certified by the Department to be likely to occur in foreseeable future to meet requirements under unforeseeable situations.

11. In this case, admittedly no such reserve list was prepared along with the list of selected candidates in the first occasion. The list of selected candidates already published, in such circumstances, did not contain any reserve list. On a perusal of the file, it is seen that the Selection Board itself was constituted by the appointing authority to assist him in the matter of selection to the post. If only there was a waiting list published along with

the selected candidates' list, consideration of such reserve list would have occasioned. There is nothing on record to show that the Administrator who is the appointing authority had requested the Selection Board to sent a reserve list and as a matter of fact, the whole process of the Interview Board, after the select list of the lone candidate Aneesurrahaman was forwarded to the appointing authority, was without any such directions from the appointing authority. The Tribunal, in such circumstances, found that neither the constitution nor the composition of the second Board was approved by the Administrator and it was for this reason, that the recommendations nominating the petitioner was not approved by the Admdinistrator leading to the impugned re-notification of the vacancy.

12. It is true that the Selection Board ought to have prepared a reserve list along with the selected candidates' list in which event this reserve list would also have been published along with the selected candidates' list and the petitioner had a fair chance of being appointed. But in this case, it so happened, there was no reserve list prepared by the selection board and no such reserve list was published along with the list of selected candidates. The subsequent exercise by the interview board is also not as authorized by the Administrator. More than nine months were elapsed in the mean time and therefore, the post was re-notified. The finding

of the Tribunal, in such circumstances, that the petitioner has no legal right to be appointed to the post, cannot be said to be erroneous in law. It is well settled that this Court while exercising the power under Article 226 is not an appellate court and even if two views are possible, this Court can not substitute its view with that of the Tribunal unless the view taken by the Tribunal is totally illegal.

12. In the facts and circumstances, it cannot be said that the view expressed by the Tribunal dismissing the O.A. filed by the petitioner, for the various reasons as stated, can be held to be illegal or contrary to the Rules. In such circumstances, we do not find any ground to interfere with the order passed by the Tribunal. Accordingly, the writ petition lacks merits. it is dismissed.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

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